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8 Michael K. Cernyar, Esq. (State Bar No. 225240)
9 Attorney for Defendant, JOSE VALENCIA

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 JOSE VALENCIA,

16 Defendant.

Case No. CR 06-01912-MLH

MOTION TO WITHDRAW AS
COUNSEL OF RECORD;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION; DECLARATION OF
MICHAEL KEVIN CERNYAR

17 TO THE HONORABLE MARILYN L. HUFF, UNITED STATES DISTRICT JUDGE
18 AND TO STEVE MILLER, ASSISTANT UNITED STATES ATTORNEY:

19 Defendant's counsel, Michael Kevin Cernyar, hereby moves the
20 above-captioned Court for an ORDER relieving him as counsel of
21 record for Defendant, JOSE VALENCIA ("Mr. Valencia"). Mr.
22 Valencia has requested that this Motion be filed and Michael
23 Kevin Cernyar not only concurs, but further believes his withdraw
24 is mandatory under the RULES OF PROFESSIONAL CONDUCT.
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1 This Motion is based upon these moving papers, and all of
2 the documents contained in the Court's file in this matter.
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5 DATED: September 2, 2008

Respectfully submitted,
LAW OFFICE OF MICHAEL K. CERNYAR

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9 By: _____ /s/_____
10 Michael Kevin Cernyar
11 Attorney for Defendant
12 **JOSE VALENCIA**
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MEMORANDUM OF POINTS AND AUTHORITIES**IN SUPPORT OF MOTION TO WITHDRAW**

It has been recognized that a criminal defendant, although entitled to adequate representation, is not entitled to a "meaningful relationship" with his attorney. Morris v. Slappy (1983) 461 U.S. 1, 13-14. Nevertheless, the attorney-client relationship in the instant case has deteriorated to a point where it would be preposterous to say it exists at all other than in name only.

Rule 3-700 provides that a member shall seek to withdraw from employment with the permission of the Court when the attorney knows or should know certain things that make his continued employment and representation of said client untenable under certain circumstances.

In the instant case, Mr. Valencia is desirous of withdrawing his guilty plea and going to trial on the charges set forth in the Indictment. Although there certainly appeared to be full compliance with all of the requirements of Rule 11, Federal Rules of Criminal Procedure, nevertheless, if the allegations Mr. Valencia is making are found to be true, this Honorable Court may well set aside his guilty plea. Moreover, this Honorable Court may decide to set aside Mr. Valencia's guilty plea even if the Court is not convinced that present counsel rendered ineffective assistance as many federal judges, in the face of a defendant's

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adamant denial of guilt, irrespective of how tardy, will require the defendant to go to trial and will not sentence a defendant in the face of the defendant's denial of guilt.

Finally, the grounds on which Mr. Valencia seeks to withdraw his plea may well require present counsel to have to defend his reputation and performance in representing Mr. Valencia up to and including the time he entered his plea. This presents an obvious conflict, should Mr. Valencia waive the attorney-client privilege by making assertions or allegations against present counsel.

CONCLUSION

For the foregoing reasons, counsel for Mr. Valencia urges this Honorable Court to grant his motion to be relieved as counsel of record in this matter.

DATED: September 2, 2008

Respectfully submitted,
 LAW OFFICE OF MICHAEL K. CERNYAR

By: /s/
 Michael Kevin Cernyar
 Attorney for Defendant
JOSE VALENCIA

DECLARATION OF MICHAEL KEVIN CERNYAR

MICHAEL KEVIN CERNYAR declares as follows:

1. I am an attorney licensed to practice before all courts of the State of California and in the United States District Court for the Southern District of California. I am counsel for Jose Valencia ("Mr. Valencia"), in the proceeding entitled United States v. Jose Valencia, CR 06-1912-MLH. I have been representing Mr. Valencia since approximately February 27, 2007.

2. After having extensive plea negotiations with Assistant United States Attorney, Steve Miller, a plea agreement was reached and a change of plea hearing was held on January 9, 2008.

3. Following the entry of his guilty plea, sentencing was initially set for April 7, 2008, continued to May 19, 2008 and now set for September 8, 2008.

4. Subsequently, Declarant learned that Mr. Valencia wanted to withdraw his guilty plea.

5. On Tuesday, September 2, 2008 Mr. Valencia advised Declarant of his grounds for wanting to withdraw his plea and said grounds appear to certainly challenge the competency of present counsel and withdrawal from the case appears not only clearly constitutionally required by the Sixth Amendment to the United States Constitution, but compelled as well by Rule 3-700 of the RULES OF PROFESSIONAL CONDUCT.

Executed on September 2, 2008, at Long Beach, California.

By /S/
MICHAEL KEVIN CERNYAR